

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION
FOR THE SAN FRANCISCO ELECTRIC
RELIABILITY PROJECT**

DOCKET No. 04-AFC-01

**COMMITTEE RULING RE:
JOINT MOTION OF CARE AND SARVEY
TO STRIKE OPENING BRIEF OF APPLICANT**

I. BACKGROUND

On June 26, 2006, Intervenor CARE and Sarvey (Intervenor) filed their *Joint Motion of CARE and Intervenor Sarvey to Strike Opening Brief of Applicant* (Joint Motion). In their pleading the Intervenor cite the deadline for opening briefs given by the Hearing Officer as "...due on June 26, 2006 by close of business..." (5/31/06 RT 269). Close of business at the Energy Commission is 5:00 p.m. Applicant's opening brief was electronically served on parties at 5:53 p.m. on June 26, 2006. Intervenor's requested remedy for Applicant's fifty-three minute tardiness is to entirely strike Applicant's brief, arguing that, "[t]o do otherwise will demonstrate prejudice against Intervenor in violation of our due process and equal protection rights." (Joint Motion, p. 1.)

II. DISCUSSION

We do not condone Applicant's acknowledged failure to meet a required deadline. In this instance, however, Intervenor's claim of prejudice is without merit. The fifty-three minute disadvantage Applicant imposed upon all parties as a result of its failure to meet the deadline is but a tiny fraction of the 14-day period the Committee allowed between the filing deadlines for both the opening and closing briefs. Intervenor have not been substantially prejudiced. In fact, Intervenor themselves failed to serve their opening briefs to the proper email

address for Applicant's counsel. Thus, Applicant was denied the benefit of receiving Intervenor's briefs until the day following the deadline, a "prejudice" to Applicant which far exceeds that experienced by Intervenor's.

III. Ruling

Intervenor's failure to properly serve their opening briefs on Applicant eliminates any equitable argument they may have had based on Applicant's untimely filing. Furthermore, the remedy Intervenor's seek is entirely disproportionate to the inconvenience they may have undergone.

Intervenor's Joint Motion is ***DENIED***.

Dated July 5, 2006, at Sacramento, California.

Original signed by: _____

JAMES D. BOYD

Commissioner and Presiding Member

San Francisco Electric Reliability Project AFC Committee

Original signed by: _____

JOHN L. GEESMAN

Commissioner and Associate Member

San Francisco Electric Reliability Project AFC Committee